

95-CA-1735-MR

JERRY R. SPEARS, Administrator of the  
Estate of Joseph R. Spears

APPELLANT

v. APPEAL FROM THE JEFFERSON CIRCUIT COURT  
HONORABLE WILLIAM KNOPE, JUDGE  
ACTION NO. 94-CI-4669

CITY OF LOUISVILLE;  
DOUGLAS HAMILTON, Chief of Police;  
OFFICER JAMES EMBRY; OFFICER  
RHONDA BOTT; OFFICER LARRY CAPE;  
and OFFICER DOUG FOLAND

APPELLEES

OPINION AFFIRMING

\* \* \* \* \*

BEFORE: COMBS, HOWERTON, and WILHOIT, Judges.

WILHOIT, JUDGE. This appeal is from the order of the Jefferson Circuit Court entered on June 2, 1995, granting the appellees' motion for summary judgment and dismissing the appellant's complaint with prejudice.

The appellant originally filed an action in the United States District Court for the Western District of Kentucky, alleging that the appellees deprived the decedent of certain rights guaranteed him by the United States Constitution. He also included a state law negligence claim. The federal district

court eventually dismissed the appellant's Constitutional claim, and by virtue of Williams v. City of River Rouge, 909 F.2d 151 (6th Cir. 1990), dismissed the appellant's negligence claim without prejudice. Thereafter, the appellant filed a wrongful death claim in the Jefferson Circuit Court.

The facts serving as the basis of the appellant's claim are essentially uncontroverted, with the trial court adopting the findings of fact as stated by the United States Court of Appeals for the Sixth Circuit. The Court of Appeals found as follows:

The relevant facts are not in dispute. On July 25, 1991, at 5:27 a.m., in Louisville, Kentucky, defendant James Embry saw a motorcycle with a broken tail light and with a passenger who was not wearing a helmet. Michael Pound was driving the motorcycle, and Joseph Spear, the Plaintiff's decedent son, was the passenger. Embry turned on his police lights to pull the motorcycle over; he called police dispatch and relayed the license plate number. The motorcycle pulled over to the curb, but as Embry got out of his police car, the motorcycle sped away, disregarding traffic signals. Embry got back into his car, again called police dispatch, and began pursuing the motorcycle. The dispatcher notified Embry that the motorcycle might be stolen.

Embry pursued the motorcycle through the streets of Louisville and was soon joined by defendant Officers Rhonda Bott and Doug Foland. None of the police cars ever had any physical contact with the motorcycle. At one point, Embry was able to pull alongside the motorcycle, and Embry inferred from Spear's facial expressions and hand gestures that he was along for the ride against his preference. Another officer, defendant Larry Cape, set up a road block with his police car. The motorcycle approached the road block, slowed, cut across a parking lot, and continued to flee. Embry was unable to follow, and he radioed dispatch he was no longer in pursuit.

Shortly thereafter and some two miles beyond the road block, the motorcycle collided with a truck, killing Spears but not Pound. Apparently none of the officers saw the crash. All the police cars involved were marked cars, with lights and sirens. The weather conditions were clear, and there was no traffic congestion at the time of the chase, which reached speeds of up to 80 m.p.h. Pound was charged with receiving stolen property and manslaughter; he pleaded guilty to manslaughter and theft.

The appellees moved the trial court for summary judgment, arguing that the police officers' pursuit of the motorcycle was not the proximate or legal cause of the fatal accident and that the officers had an affirmative legal duty to arrest both the appellant and Mr. Pound for their illegal actions. The appellant responded, asserting that the trial court should allow him to proceed with his action because emergency personnel, such as the officers, can be the proximate cause of an accident such as the one in this case.

The trial court, relying upon Chambers v. Ideal Pure Milk Co., Ky., 245 S.W.2d 589 (1952), and Morris v. Combs, Adm'r, 304 Ky. 187, 200 S.W.2d 281 (1947), concluded that

[a]lthough the appellate courts of this Commonwealth have not recently addressed the issue of whether a police officer can be held liable for an accident occurring during a high speed pursuit, this Court finds that the prevailing case law is such that a police officer cannot legally be found liable under the facts of this case as pled.

The trial court proceeded to grant summary judgment in favor of the appellees, dismissing the appellant's complaint with prejudice. This appeal followed.

The appellant maintains that the trial court erred in entering summary judgment in favor of the appellees as issues of fact remain relating to whether the alleged negligence of the police officers constituted a proximate cause of Mr. Spears' death. The appellant requests this court "to hold that the actions of police officers in the Commonwealth of Kentucky can be the proximate cause of injuries or deaths resulting from high speed chases, dependent upon the circumstances of a given case." (emphasis original.)

We do not doubt that the actions of a police officer engaged in a high speed chase may constitute the proximate cause of an individual's injury or death. The question presented to this court is whether the actions of the police officers in this case and under these undisputed facts constituted a proximate or legal cause of Mr. Spears' death. The trial court simply held that such was not the case.

Summary judgment is only appropriate "when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant." Steelvest, Inc. v. Scansteel Service Ctr., Inc., Ky., 807 S.W.2d 476, 483 (1991), citing Paintsville Hospital Co. v. Rose, Ky., 683 S.W.2d 255 (1985). The respondent, however, may not defeat a properly supported motion for summary judgment absent some affirmative evidence showing that there exists an issue of material fact for the trial. Id. at 482.

Kentucky's highest court addressed a factual situation similar to what we have here in Chambers v. Ideal Pure Milk Co., supra. In that case, a third party was fleeing from police when he collided with a milk wagon, injuring its driver. At the time of the collision, the third party's car was travelling at 70 to 75 m.p.h. The driver subsequently brought suit charging that the police officers' negligent conduct caused his injuries. The Chambers Court rejected his contention, holding as follows:

The police were performing their duty when Shearer, in gross violation of his duty to obey the speed laws, crashed into the milk wagon. To argue that the officers' pursuit caused Shearer to speed may be factually true, but it does not follow that the officers are liable at law for the results of Shearer's negligent speed. Police cannot be made insurers of the conduct of the culprits they chase. It is our conclusion that the action of the police was not the legal or proximate cause of the accident, and that the jury should have been instructed to find for the appellants.

Id. at 591. Contrary to the appellant's assertion that this holding authorizes a "blanket denial" of tort recovery against police and declares police officers "infallible" for tort law purposes, the Chambers decision is limited to the specific fact situation presented there. The circumstances presented by this case are substantially similar to those presented in the Chambers case.

Review of the record shows that it is impossible for the appellant to present evidence to the trial court tending to show that any negligent conduct on the part of the police officers involved constituted a legal cause of his decedent's

death. The summary judgment entered by the Jefferson Circuit Court must, therefore, be affirmed. See Steelvest, Inc. v. Scansteel Service Ctr., supra.

ALL CONCUR.

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